IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14173 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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VIJAY SUNDERLAL PATEL

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 14173 of 2004

MS KRISHNA U MISHRA for Petitioner No. 1

MS HB PUNANI, AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

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CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 13/12/2004

ORAL JUDGEMENT

1. Heard ld. counsel Mr. Pandya for ld. counsel Ms. KU Mishra for the detenu and ld. AGP Ms. Punani

for the State. Affidavit in reply of Commissioner of Police, Ahmedabad City, tendered by ld. AGP Ms.Punani is taken on record.

2. By this petition under Article 226 read with Articles 21 & 22(5) of the Constitution of India, the petitioner detenu has challenged the legality and validity of the order of detention dated 07.01.2004 passed by the Police Commissioner, Ahmedabad City, in exercise of the powers conferred on him by Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act) against the petitioner-detenu. The petitioner detenu has been branded as "dangerous person" as defined under Sec.2(c) of the PASA Act..

3. The grounds for detention supplied to the detenu petitioner indicate that for recording subjective satisfaction, the detaining authority has relied on 10 criminal cases registered against the detenu between 02.03.2003 to 25.11.2003 i.e. within a period of about 9 months, as mentioned in the tabular form shown on page no.1 of grounds of detention conveyed to the detenu while executing the order of detention. All the cases are relating theft of two-wheelers as well as spare-wheels of the two-wheelers parked in the open parking place. The detaining authority has also considered the statements of two witnesses which have been recorded by the sponsoring authority on 29.12.2003, which were verified on 31.12.2003 and detention order came to be passed on 07.01.2004.

4. The impugned order of detention is assailed on various grounds mentioned in the memo of the petition. However, ld. counsel Mr. Pandya appearing for ld. counsel Ms. Mishra for the detenu has focussed his arguments mainly on two points. The first point canvassed by ld. counsel Mr.Pandya is that on the date of passing as well as execution of detention order, the detenu was in judicial custody and, therefore, there was no need for the sponsoring authority to place papers for obtaining preventive detention order. So, it can be said that order of detention is passed on conjecture or hypothesis that the detenu will file bail application, will obtain bail and continue his activities and such activities would be having much potential to disturb the public order.

5. In number of cases, this Court has consistently placed reliance on the ratio of the decision in the case of Amrutlal & Others v/s Union of India, Through Secretary, Ministry of Finance & Ors., AIR 2000 SC 3675

and has quashed the order of detention where detenu on the date of passing and/or execution of detention order, was either in judicial or in police custody. The reason that there is "likelihood to be released on bail", is different from "likelihood of his moving application for bail". In the cited decision, detenu was in custody. In these facts and circumstances, ratio of the decision in the case of Vinod Singh V/s District Magistrate, Dhanbad, AIR 1986 SC 2090 also would help the present petitioner-detenu. So, on this sole ground, impugned order of detention requires to be quashed.

6. The second point canvassed by ld. counsel Mr. Pandya for the detenu is that from mere commission of the offence of theft of two-wheelers and theft of spare-wheels of two-wheelers parked in open parking place, it can not be said that that the activities of the detenu are prejudicial to maintenance of public order. It is submitted that detaining authority ought not to have recorded subjective satisfaction on mere registration of 10 criminal cases in about 9 months that the activities of the detenu have potential to disturb the maintenance of public order. In support of this submission, ld. counsel Mr. Pandya has placed reliance on the decision of this Court rendered in Spl.C.A. No.7073/2004 on 29.11.2004 in the case of Anil Jivabhai Parsana v/s Commissioner of Police, wherein it has been observed as under:-

> "..... In support of this submission, Ms. Rana has placed reliance on the ratio of the decision of of the Division Bench of this Court (Coram: A.P.Ravani and J.M. Panchal, JJ) in the case of Bhupendra @ Bhappi Kimatgiri Goswami in Special Criminal Application No.1681 of 1992 decided on 3rd March, 1993. The Division Bench of this Court after quoting the observations of the Apex Court in the case of Harpeet Kaur vs. State of Maharashtra, reported in 1992 SC 797, has held that involvement of the accused in 14 offences including the offences of lifting gas cylinders cannot be said to be prejudicial or dangerous to the maintenance of public tranquility and the authority was not justified in arriving at the subjective satisfaction that the activities of the petitioner were likely to affect the maintenance of public tranquility. Ms. Rana has also placed reliance on one another decision reported in 2000(1) GLH 393 in the case of Ashokbhai Jivraj @ Jivabhai Solanki vs. Police Commissioner, Surat and Ors. In the said decision, the appellant Ashok Jivraj was found

involved in grave offences punishable under the Indian Penal Code r/w Section 135 of the Bombay Police Act. The observations of the Division Bench in paras:22 and 23 are relevant....."

In view of above settled legal position, the say of ld. counsel Mr. Pandya that detaining authority has committed grave error in arriving at subjective satisfaction that the detenu is a "dangerous person" and his activities are prejudicial or dangerous to maintenance of public order, requires to be accepted. So, on this ground also, the impugned order of detention requires to be quashed and set aside. So, accepting the ratio and reasons assigned by this Court in the above-cited decisions, impugned order of detention requires to be quashed and set aside.

7. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 07.01.2004 passed by the Police Commissioner, Ahmedabad City, is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute.

Direct Service is permitted.

[ C. K.BUCH, J]

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